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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,596	09/06/2006	Brendyn Murray Rodgers	102792-47-11177P5US	3202
27389 7590 04/22/2008 NORRIS, MCLAUGHLIN & MARCUS 875 THIRD AVE 18TH FLOOR NEW YORK, NY 10022			EXAMINER ARK, DARREN W	
			ART UNIT 3643	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/595,596	Applicant(s) RODGERS ET AL.	
	Examiner Darren W. Ark	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 20-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/28/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 20-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 02/08/2008.
2. Applicant's election with traverse of Species IV in the reply filed on 02/08/2008 is acknowledged. The traversal is on the ground(s) that "...it is believed that the subject matter of the claims is reasonably technically proximate such that a single search of the claims may be made to encompass the subject matter of all the claims (1-33) without being unduly burdensome to the Examiner...". This is not found persuasive because the Examiner contends that the unique search required for each of the Species is not required in the search of the other Species. If applicant is traversing on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

The requirement is still deemed proper and is therefore made FINAL.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-19 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 7,231,738.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application recites a top and base vs. a first part and second part; an enclosure is circular in shape; a biasing means versus and first biasing means is a helical torsion spring; a lever arrangement vs. a lever; a stop means; a gap; a strike plate; a catch plate; and a bait housing.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, the term “the closed position” renders the claim vague and indefinite since it lacks positive antecedent basis and also has not been particularly defined in a similar manner to the “open position” which was set forth as “upon substantial alignment of the apertures”.

In regard to claim 1, line 7, the term “the mouse” lacks positive antecedent basis.

In regard to claim 3, the term “the strike plate” lacks positive antecedent basis.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-13, 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Knuppel 6,230,434.

Knuppel discloses an enclosure (see Fig. 1) comprises of a top (20), a base (50) and apertures located on each of the top (44) and base (between adjacent 52), wherein

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the enclosure is in an open position upon alignment of the apertures (when an aperture between adjacent ones of 52 is lined up with 44); a trigger mechanism comprising a lever arrangement (120) and a biasing means (56) operably connected to the top and base (56 is connected to 50 and connected to 20 via interconnection of parts), wherein the lever arrangement defines a gap (gap between 120 & 66, 70, or upper ones of 52; gap not being particularly claimed), wherein the enclosure when in the open position is able to admit the mouse into the enclosure and when in the closed position, the trapped mouse is substantially concealed within the enclosure (when mouse is pushed into 42); the trap being set to trap the mouse by manual rotation of the top relative to the base to open the enclosure (when handle 54 is rotated) to open the enclosure by alignment of the apertures (user ensures alignment), the enclosure being held open against the force of the biasing means by engagement of the lever arrangement (120, 122 or 116) with a stop means (70, 100 or 66, 90), the trap being activated by raising the lever arrangement in response to the mouse moving through the gap (mouse stepping on 120 depresses 120 which causes the raising of the opposite end 122 against).

In regard to claim 2, Knuppel discloses a strike plate (36).

In regard to claim 3, Knuppel discloses a catch plate (52) connected to the base (50) and extending at right angles to an internal wall of the enclosure (52 is perpendicular to 16 or 18).

In regard to claims 4 and 5, Knuppel discloses the stop means (70) also serving as a strike plate (96) connected to the top (via interconnection of parts and also when

52 rotates to abut 96) and extending at right angles to an internal wall of the enclosure (20, 22); and a catch plate (36).

In regard to claims 6-8, Knuppel discloses the strike plate or catch plate including one or more projections (see Fig. 4) in the form of angular kinks or spikes (corner at intersection of 36 with 39 is sharp and ends of 52 are generally pointed).

In regard to claim 9, Knuppel discloses at least a section of the base (44, 158) and top (88, 94, 114, 126, 134, 136, 148, 160, 166) being circular.

In regard to claim 10, Knuppel discloses the enclosure being circular in shape (158, 148 have circular shapes and also 39 has a curved shape similar to a part of a circle; can be interpreted such that at least a portion of the enclosure has circular shape).

In regard to claim 13 Knuppel discloses a bait housing (either between 20 & 36 or between 22 & 34).

In regard to claim 19, Knuppel discloses a lip (30 or 26).

9. Claims 1-13, 17, 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Great Britain Pat. No. 207,057 to Hockey.

Hockey discloses an enclosure comprised of a top (a), a base (d) and apertures (b1, b2 and g1-3), wherein the enclosure is in an open position upon alignment of the apertures (see Fig. 1); a trigger mechanism (h, i) comprising a lever arrangement (i) and a biasing means (f) operably connected to the top and base, wherein the lever arrangement defines a gap (between h and i), wherein the enclosure, when in the open position, is able to admit the mouse into the enclosure and when in the closed position,

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the trapped mouse is concealed within the enclosure (when b1 is not aligned with one of g1-3); the trap being set to trap the mouse by manual rotation of the top relative to the base to open the enclosure by alignment of the apertures (user ensures that b1 is aligned with one of g1-3), the enclosure being held open against the force of the biasing means (f) by engagement of the lever arrangement (i) with a stop means (j); and the trap being activated by the mouse by raising of the lever (h can be raised or lowered in response to the mouse moving through the gap (in its attempt to free the bait) thereby disengaging the lever arrangement (i) from the stop means and causing the top (a) to contra-rotate relative to the base under the force of the biasing means (f).

In regard to claim 2, Hockey discloses a strike plate (e).

In regard to claim 3, Hockey discloses the catch plate (one of j) connected to the base (d).

In regard to claim 19, Hockey discloses the base including a lip (bottom edge of d).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kness 6,230,434 in view of Kness 2,594,182 or Kness 1,758,952.

Alternatively Kness '434 does not disclose a bait housing. Kness '182 and Kness '952 discloses a bait housing (48 OR 29) which is able to be loaded with bait from an underside of the base (7 can be removed or access to 48 can be had via through 24 or from bottom of 6 and into 48 OR 28 can be removed to gain access within 29), the housing comprising one or more vents (48 comprises screen material OR 30). It would have been obvious to one of ordinary skill in the art to modify the trap of Kness '434 such that it has a bait housing in view of Kness '182 or '952 in order to retain the bait within a given area without having to worry about the bait being messily dispersed within the trap.

12. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kness 6,230,434 in view of Kness 2,594,182 or Kness 1,758,952 as applied to claim 13 above, and further in view of Mutz 1,214,060 or Drdlik 4,363,183.

Kness '434 and Kness '182 or '952 do not disclose the bait housing including one or more spikes. Mutz and Drdlik disclose a bait housing (15 OR 17) including one or more spikes (see Fig. 3 OR 30, 31). It would have been obvious to one of ordinary skill in the art to modify the bait housing of Kness '434 and Kness '182 or '952 such that it has one or more spikes in view of Mutz or Drdlik in order to provide means for retaining bait within the bait housing which suspends the bait within the interior of the bait housing to make it more visible and so as to isolate the bait from being touched by the rodents to prevent it from falling apart.

13. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kness 6,230,434 in view of Schmidt 5,148,624 or Sensing et al. 4,569,149.

Kness does not disclose the trap being provided to the consumer with bait located within the bait housing. Schmidt or Sensing et al. disclose the trap being provided to the consumer with bait (72 OR 45) located within the bait housing (70 OR 44). It would have been obvious to one of ordinary skill in the art to modify the trap of Kness such that it is provided to the consumer with bait located within the bait housing in view of Schmidt or Sensing et al. in order to reduce the preparation requirements of the user and also to enhance the sanitary features of the trap.

14. Claim 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Great Britain Pat. No. 207,057 to Hockey in view of Kness 2,594,182 or Kness 1,758,952.

Alternatively Hockey does not disclose a bait housing. Kness '182 and Kness '952 discloses a bait housing (48 OR 29) which is able to be loaded with bait from an underside of the base (7 can be removed or access to 48 can be had via through 24 or from bottom of 6 and into 48 OR 28 can be removed to gain access within 29), the housing comprising one or more vents (48 comprises screen material OR 30). It would have been obvious to one of ordinary skill in the art to modify the trap of Hockey such that it has a bait housing in view of Kness '182 or '952 in order to retain the bait within a given area without having to worry about the bait being messily dispersed within the trap.

15. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable Great Britain Pat. No. 207,057 to Hockey in view of Kness 2,594,182 or Kness 1,758,952 as applied to claim 13 above, and further in view of Mutz 1,214,060 or Drdlik 4,363,183.

Hockey and Kness '182 or '952 do not disclose the bait housing including one or more spikes. Mutz and Drdlik disclose a bait housing (15 OR 17) including one or more spikes (see Fig. 3 OR 30, 31). It would have been obvious to one of ordinary skill in the art to modify the bait housing of Hockey and Kness '182 or '952 such that it has one or more spikes in view of Mutz or Drdlik in order to provide means for retaining bait within the bait housing which suspends the bait within the interior of the bait housing to make it more visible and so as to isolate the bait from being touched by the rodents to prevent it from falling apart.

16. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Great Britain Pat. No. 207,057 to Hockey in view of Schmidt 5,148,624 or Sensing et al. 4,569,149.

Hockey does not disclose the trap being provided to the consumer with bait located within the bait housing. Schmidt or Sensing et al. disclose the trap being provided to the consumer with bait (72 OR 45) located within the bait housing (70 OR 44). It would have been obvious to one of ordinary skill in the art to modify the trap of Hockey such that it is provided to the consumer with bait located within the bait housing in view of Schmidt or Sensing et al. in order to reduce the preparation requirements of the user and also to enhance the sanitary features of the trap.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rinaldy et al. 2,120,812 discloses an animal trap with a strike

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plate (23) having projections/angular kinks/spikes (24) and a catch plate (20) having projections/angular kinks/spikes (21). Hall 309,781 discloses a trigger mechanism comprising a lever arrangement (Q, N) and a biasing means (D) and a strike plate having projections/angular kinks/spikes (L).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (571) 272-6885. The examiner can normally be reached on M-F, 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darren W. Ark/
Darren W. Ark
Primary Examiner
Art Unit 3643

DWA